

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LEAGUE OF WOMEN VOTERS
OF MICHIGAN, ROGER J. BRDAK,
FREDERICK C. DURHAL, JR.,
JACK E. ELLIS, DONNA E.
FARRIS, WILLIAM “BILL” J.
GRASHA, ROSA L. HOLLIDAY,
DIANA L. KETOLA, JON “JACK”
G. LASALLE, RICHARD “DICK”
W. LONG, LORENZO RIVERA
and RASHIDA H. TLAIB,

Plaintiffs,

v.

JOCELYN BENSON, in her official
Capacity as Michigan
Secretary of State,

Defendant.

Case No. 2:17-cv-14148

Hon. Eric L. Clay
Hon. Denise Page Hood
Hon. Gordon J. Quist

**THE MICHIGAN SENATE’S
MOTION FOR IMMEDIATE
CONSIDERATION OF MOTION
TO INTERVENE**

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CONSIDERATION OF MOTION TO INTERVENE**

Nonparty and Proposed Intervenor the Michigan Senate (the “Senate”), through its attorneys, Dykema Gossett PLLC, hereby moves for immediate consideration of its Motion to Intervene. This Motion is accompanied by a Brief in Support per LR 7.1(d).

Respectfully submitted,

DYKEMA GOSSETT PLLC

Date: January 24, 2019

By: /s/ Jason T. Hanselman
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**THE MICHIGAN SENATE’S
BRIEF IN SUPPORT OF MOTION
FOR IMMEDIATE
CONSIDERATION OF MOTION
TO INTERVENE**

**THE MICHIGAN SENATE'S BRIEF IN SUPPORT OF MOTION FOR
IMMEDIATE CONSIDERATION OF MOTION TO INTERVENE**

In support of its Motion for Immediate Consideration of its Motion to Intervene, the Senate, through its attorneys, Dykema Gossett PLLC, states as follows:

1. On December 22, 2017, the League of Women Voters of Michigan and other named individuals (collectively, "Plaintiffs") filed a two-count Complaint for Declaratory and Injunctive Relief (ECF No. 1) against former Michigan Secretary of State Ruth Johnson in her official capacity, asserting that Michigan's current congressional and state legislative apportionment plans are unconstitutional pursuant to 42 U.S.C. § 1983, § 1988 and the First and Fourteenth Amendments to the United States Constitution.

2. Former Secretary Johnson vigorously defended the duly enacted congressional and state legislative apportionment plans during her term in office, which ended on December 31, 2018.

3. On January 1, 2019, Secretary of State Jocelyn Benson was sworn into office as former Secretary Johnson's successor and, under Fed. R. Civ. P. 25(d), was automatically substituted as a party in this case in her official capacity.

4. On January 17, 2019, Secretary Benson filed a Response to Defendants-Intervenors' Emergency Motion to Stay Trial, in which she agreed that an adjournment of the imminent trial scheduled for February 5, 2019, would be

appropriate under the circumstances of this case and stated that “[a]n adjournment will permit the Secretary of State and Plaintiffs the opportunity to focus their efforts on negotiating a mutually agreeable and complete resolution of their disputes.” (ECF #199, PageID.7601.)

5. Because Secretary Benson apparently is declining to defend Michigan’s current duly enacted congressional and state legislative apportionment plans, the Senate’s interests, as described in its Motion to Intervene and Brief in Support, are no longer being vigorously defended.

6. This Court’s August 14, 2018 Order denying intervention by members of the Michigan House of Representatives (the “House Intervenors”) dissuaded the Senate from intervening earlier because it concluded that the “Applicants’ motion [to intervene] is premature. Although Applicants speculate about the ‘possibility’ that the executive branch will end its participation in this matter, [R. 70 at PageID #1221], Applicants’ argument presupposes events that have not yet come to pass, including but not limited to the executive branch ending its participation in this case and the legislative branch voting to fill the adversarial void. Assuming, without deciding, that there are circumstances in which the legislative branch may permissibly represent the state’s interests in court, Applicants’ current motion is premature.” (ECF #91, PageID.2061-62.)

8. The possibility that the executive branch would end its participation and vigorous defense in this case has now come to pass, and the Senate's interests are not being adequately represented.

9. Through its Motion to Intervene and Brief in Support, the Senate seeks to meaningfully participate in any negotiations toward a "mutually agreeable and complete resolution of the[se] disputes" (ECF #199, PageID.7601) and, if no settlement is reached, in the subsequent trial.

WHEREFORE, for the foregoing reasons, the Senate respectfully requests that this Court grant its Motion for Immediate Consideration of its Motion to Intervene.

Respectfully submitted,

DYKEMA GOSSETT PLLC

Date: January 24, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2019, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record. I hereby certify that I have mailed by United States Postal Service the same to any non-ECF participants.

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